

**REMARKS**

The undersigned, on behalf of the Applicants, thank the Examiner for withdrawing previous rejections on record. Applicants respectfully request entry of the present amendment, the consideration of the following remarks and withdrawal of the pending rejection. Claims 158-164, 166-168, 171-172, 187-198, 201-202, 205-207, 215 and 216 are pending in the application. Claims 169-170, 173-186, 199-200 are canceled without prejudice. Claim 158, 187, 205, 215 and 216 have been amended to emphasize the increase in adhesion of the patch post hydration phase. Support for such increase can be found at table 2, page 35. No new matter has been added.

**I. REJECTIONS OF CLAIMS OVER BLISS US PATENT 5,177,113 OR SUZUKI ET AL (JP 10-17448) IN VIEW OF GALLOPO US 2001/0002252 UNDER 35 USC § 103(A).**

The rejections as set forth in the Office Action employ the combination of the teachings of Bliss or Suzuki in view of Gallopo. Applicants respectfully disagree for the reasons set forth below.

The Examiner asserts that Bliss teaches the combination of hydrogen peroxide, polyvinyl pyrrolidone and hydroxypropyl methylcellulose. *See* OA at pp. 2-3. The Examiner agrees that Bliss fails to meet other elemental limitations of the present claims. Yet, relying on Gallopo, the Examiner justifies the use of whitening agents such as pyrophosphates in the composition of Bliss and rejects the pending claims. *Id.*

Applicants respectfully submit the science and law does not support the Examiner's position. First, Bliss does not mention any use of its product, or any oral patch having an adhesive strength for use in the mouth. Bliss is directed to industrial use such as bleaching and disinfecting articles. Such use does not apply to oral care products and therefore are not in the same field of endeavor. Second, there is no mention of any adhesive properties in Bliss.

Gallopó is in an entirely different field than Bliss or the present invention. Therefore, those of ordinary skill in the art would not be interested to combine their teachings as they neither solve, nor related to same problems. For such reasons, there would have been no motivation in the art to combine such references to reach the present claims, but for improper use of hindsight.

In another section of the Office Action, the Examiner rejects the pending claims over the teachings of Suzuki and Gallopó. Applicants respectfully add that Examiner's conclusion is nothing but than improper hindsight. The Examiner first acknowledges that Suzuki not only fails to teach tripolyphosphate or a polyphosphate but also fails to disclose any examples comprising PVP, hydrogen peroxide and hydroxyethylcellulose. *See* OA at p. 6. Yet, the Examiner assumes that any combination of such undisclosed components would have been obvious. Such rationale is based on unfounded assumptions and improper reliance on the present specification.

Applicants respectfully submit that in the earlier priority application, for example US Patent Application 10/049,817 ("US '817"), the inventors clearly provided evidence of unexpected results by comparing the claimed products with formulations suggested in Suzuki, i.e. comparative example 1 of US '817. The embodiments of Suzuki when directly compared with those of the present invention were vastly inferior to those the present formulations. Suzuki was further described to have specific disadvantages and ineffective properties. For example, the priority application US '817 clearly set forth the significant problems associate with Suzukis' products, i.e. gum irritation, stickiness, whitening and particularly storage issues.

The presently claimed invention, on the other hand, provides substantial unexpected superiority over those in Suzuki. Gallopó does nothing to remedy any such shortcomings of Suzuki. Thus, aside from failing to meet all elemental components of the present claims, as

acknowledged by the Examiner, Applicants have provided ample evidence of unexpected results over the prior art formulations. For such reasons, any rejection of record relying on the teachings of Bliss or Suzuki in view of Gallopo or any other tertiary reference should be withdrawn.

Regardless, the claims are now amended to specifically require a specific degree of change in adhesive strength upon hydration of the patch when placed on the teeth of a user. None of the cited references meet such limitations. For such reasons, the rejection is improper and should be withdrawn.

**II. REJECTIONS OF CLAIMS OVER BLISS OR SUZUKI IN VIEW OF GALLOPO AND FURTHER IN VIEW OF TAPOLSKY**

Since any rejection of Bliss or Suzuki and Gallopo is improper for the reasons set forth above, any rejection on the teachings of Bliss or Suzuki and Gallopo or any other tertiary reference would also be improper and should be withdrawn. Tapolsky can not cure the shortcomings of the teachings of Bliss, Suzuki or Gallopo and for such reasons the rejection should be withdrawn.

**III. PROVISIONAL DOUBLE PATENTING REJECTIONS OF CLAIMS OF US 11/414,435.**

Applicants respectfully request that this double patenting rejection be held in abeyance until the claims are declared free of art. At that point, the Applicants would address this rejection to advance the prosecution of the pending claims.

**CONCLUSION**

Applicants respectfully request that the pending claims are allowable. If a telephone conference would be of assistance in advancing the prosecution of the present application, Applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Applicant also authorizes the charge of any deficiency and/or the credit of any overpayment to Deposit Account No. 50-1943.

Date: November 1, 2010

Respectfully submitted,

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